



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

**APR 08 2010**

REPLY TO THE ATTENTION OF:

**SE-5J**

Karyn B. Marsh, Esq.  
Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5306

EPA Region 5 Records Ctr.



**361332**

**RE: Bautsch-Gray Mine Site, Site ID # B5TS  
General Notice of Potential Liability and Request for Information**

Dear Ms. Marsh:

The United States Environmental Protection Agency (EPA) has documented the release or threat of release of hazardous substances, pollutants and contaminants into the environment at the Bautsch-Gray Mine Site (Site) located approximately 4 miles south of Galena on South Blackjack Road in Jo Daviess County, Illinois, and is planning to spend public funds to control and investigate these releases. This action will be taken by EPA pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 *et seq.* (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (SARA), unless EPA determines that such action will be done properly by a responsible party or parties. Responsible parties under CERCLA include the current and former owners and operators of the Site, and persons who generated the hazardous substances or were involved in the transport, treatment, or disposal of the hazardous substances at the Site. Under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), where EPA uses public funds towards the cleanup of the hazardous substances, responsible parties are liable for all costs associated with the removal or remedial action and all other necessary costs incurred in cleaning up the Site, including investigation, planning and enforcement costs.

EPA is currently planning to conduct the following actions at the above-referenced Site:

1. Develop and implement a Site Health and Safety Plan;
2. Develop and implement a Site Security Plan;
3. Develop and implement a Quality Assurance Project Plan (QAPP) for removal sampling activities;

4. Conduct perimeter air monitoring / sampling for lead and arsenic during on-site work activities to protect workers and nearby populations;
5. Collect and analyze additional soil and water samples as necessary to determine the extent of off-site contamination;
6. Excavate and remove the contaminated soil and mine tailings with lead concentrations greater than 400 parts per million (ppm) and/or with arsenic concentrations greater than 25 ppm, but not to exceed 2 feet in depth on the affected residential property at 746 S. Blackjack Road. Contaminated soil and tailings would be moved back to the main tailings pile on the Site;
7. Excavate and remove the contaminated soil and mine tailings with lead concentrations greater than 400 ppm and/or with arsenic concentrations greater than 25 ppm in road ditch areas along Blackjack Road north of the Site to Smallpox Creek, and south of the Site in the vicinity of 798 S. Blackjack Road. Contaminated soil and tailings would be moved back to the main tailings pile on the Site;
8. The main tailings pile area on the Site will be graded and contoured to ensure proper storm water retention and drainage, and drainage culvert pipes will be added, enlarged, or repaired, as necessary;
9. Excavate and remove the contaminated soil and mine tailings with lead concentrations greater than 400 ppm and/or with arsenic concentrations greater than 25 ppm in the horseshoe-shaped tailings deposition area at 798 S. Blackjack Road. Contaminated soil and tailings would be moved back to the main tailings pile on the site;
10. Develop and implement a post removal sampling plan to confirm that cleanup levels have been met; and
11. Backfill excavated residential areas with clean fill and restore to elevations and landscaping equivalent to pre-removal conditions. The horseshoe-shaped tailings deposition area at 798 S. Blackjack Road will need to be properly contoured but may not need to be backfilled with clean soil.

EPA has received information that EaglePicher may have owned or operated the Site or generated or transported hazardous substances that were disposed of at the Site. By this letter, EPA notifies you of its potential liability with regard to this matter and encourages EaglePicher, as a potentially responsible party, to agree to reimburse EPA for costs incurred to date and to voluntarily perform or finance the response activities that U.S. EPA has determined or will determine are required at the Site. EPA is willing to discuss with you the entry of an appropriate administrative consent order under which you would perform or finance response activities and reimburse EPA for its costs. If a consent order cannot be promptly concluded, EPA may issue a

unilateral order under Section 106 of CERCLA, requiring EaglePicher to perform specified work. Under Sections 106 and 107 of CERCLA, EaglePicher may be liable for reimbursement of EPA's costs, for statutory penalties, and for treble damages for noncompliance with such an order.

Because of the conditions described above, EPA believes that response activities at the Site must be initiated as quickly as possible. Therefore, EPA does not intend to utilize the special notice procedures available under Section 122(e) of CERCLA.

As a potentially responsible party, you should notify EPA in writing within seven (7) days of receipt of this letter of your willingness to perform or finance the activities described above and to reimburse EPA for its costs. If EPA does not receive a timely response, EPA will assume that EaglePicher not wish to negotiate a resolution of its potential responsibility in connection with the Site and that EaglePicher has declined any involvement in performing the response activities.

Your response should indicate the appropriate name, address, and telephone number for further contact with you. If you are already involved in discussions with state or local authorities, engaged in a voluntary cleanup action, or involved in a lawsuit regarding this Site, you should continue such activities as you see fit. This letter is not intended to advise you or direct you to restrict or discontinue any such activities already underway; however, you are advised to report the status of those discussions or actions in your response to this letter and to provide a copy of your response to any other parties involved in those discussions or actions.

In addition, EPA is seeking to obtain certain other information from you pursuant to its authority under Section 104(e) of CERCLA, 42 U.S.C. §9604(e), for the purpose of enforcing CERCLA and to assist in determining the need for response to a release of hazardous substance(s) under CERCLA. The Administrator of EPA has the authority to require any person who has or may have information relevant to any of the following to furnish EPA with such information: (1) the identification, nature or quantity of materials which have been or are generated, treated, stored or disposed of at, or transported to, a facility; (2) the nature or extent of a release or threatened release of a hazardous substance, pollutant or contaminant at or from a facility; and (3) the ability of a person to pay for or perform a cleanup. Pursuant to Section 104(e) of CERCLA, you are hereby requested to submit the following information concerning the Bautsch-Gray Mine Site in Jo Daviess County in Illinois:

**Operational Information:**

1. Information concerning any and all EaglePicher activities at or involving the operation of the mines that comprised the Bautsch-Gray Mine Site.
2. Any and all records of materials (lead, zinc, minerals, etc.) mined and/or processed at the Site.

3. Any and all records of tailings or any other mine waste derived from the mining process at the Site, and explanations/descriptions/records of EaglePicher disposal or stabilization processes employed at the Site; including the use, production, and/or disposal of arsenic at any point throughout the Site operations.
4. Any and all records of any other corporate or individual co-owners, co-operators, or silent partners involved with EaglePicher's ownership or operations at the Site.

**Financial Information:**

5. A copy of all records of internal financial decision-making by EaglePicher that involved the mining operations component(s) at the Site in Jo Daviess County, Illinois between 1964 and 1975.
6. A copy of all EaglePicher final bankruptcy and reorganization decision documents related to all mining operations at the Site in Jo Daviess County, Illinois between 1964 and 1975.
7. A copy of all EaglePicher records concerning creation of, definition of, and payment from any bankruptcy or post-bankruptcy fund/pool/source of monies committed to environmental remediation or restoration at past or present EaglePicher sites or operations, as well as any submissions concerning these monies to the bankruptcy court, or findings of record by the court concerning these matters.
8. A copy of the final bankruptcy reorganization decision and judgment of the court.
9. A list of any other corporate entities related to EaglePicher that emerged from the same bankruptcy reorganization.
10. An explanation of why EaglePicher did not include the Bautsch-Gray Mine Site (as described/defined by EPA in this 2010 General Notice Letter) in the identified properties towards which it bore a legal duty to set aside monies for environmental remediation/restoration under a set aside fund or pool of monies.

To assist you in answering this request, the information sought pertains to any and all information in your possession, custody, or control relating to the operation of the above referenced Site and to the transportation, storage, and/or disposal of hazardous substances or the generation of hazardous substances that were ultimately disposed of or offered for disposal at the Site. The relevant time period for this request is between 1964 and 1975.

For purposes of this information request "waste materials" shall mean hazardous substances, solid wastes and hazardous wastes, and other materials which may or may not contain pollutants or contaminants, and shall include reclaimed and off-specification material of any kind.

This request is directed to your company, its officers, directors, and employees, and its subsidiaries, divisions, facilities and its officers, directors, and employees. The information sought herein must be sent to EPA within twenty-one (21) calendar days of your receipt of this letter. Failure to respond fully and truthfully to this request, or to adequately justify any failure to respond, may result in an enforcement action against you by EPA under Section 104 of CERCLA, as amended. The information requested herein must be provided notwithstanding its possible characterization as confidential information or trade secrets. You may request however, that any such information be handled as confidential business information. A request for confidential treatment must be made when the information is provided, since any information not so identified will not be accorded this protection by the EPA. Information claimed as confidential will be handled in accordance with the provisions of 40 C.F.R. Part 2.

The written statements submitted pursuant to this request must be notarized and submitted under an authorized signature certifying that all information contained therein is true and accurate to the best of the signatory's knowledge and belief. Moreover, any documents submitted to EPA pursuant to this information request should be certified as true and authentic to the best of the signatory's knowledge and belief. Should the signatory find, at any time after the submittal of the requested information, that any portion of the submitted information is false, the signatory should so notify EPA. If any answer certified as true should be found to be untrue, the signatory can and may be prosecuted pursuant to 18 U.S.C. §1001. The EPA has the authority to use the information requested herein in any administrative, civil or criminal action.


Your responses to both the notice of potential liability within seven (7) days and the information requests within twenty-one (21) days should be sent to:

Carol Ropski  
U.S. EPA - Region 5  
Emergency Enforcement Services Section  
77 West Jackson Boulevard, SE-5J  
Chicago, Illinois 60604-3590

If you need further information regarding this letter, you may contact Carol Ropski, Emergency Enforcement Services Section, at (312) 353-7647. Direct any legal questions to Thomas Turner, of the Office of Regional Counsel at (312) 886-6613.

Due to the nature of the problem at this Site and the attendant legal ramifications, EPA strongly encourages you to submit a written response within the time frames specified herein. We hope you will give this matter your immediate attention.

Sincerely,

 FOR LN

Linda Nachowicz, Chief  
Emergency Response Branch #2

cc: Carey S. Rosemarin, P.C.

**BAUTSCH-GRAY MINE SITE**  
**LIST OF PRPs PREVIOUSLY SENT GENERAL NOTICE LETTERS**  
**& REQUESTS FOR INFORMATION**

West Galena Development, Inc.  
Chains & Links, Inc.  
Vincent A. Varsek Trust

c/o: Law Offices of Carey S. Rosemarin, P.C.  
500 Skokie Boulevard, Suite 510  
Northbrook, IL 60062



bcc: Tom Turner, ORC (C-14J)  
Len Zintak, (SE-5J)  
John Maritote, EESS (SE-5J)  
Carol Ropski, EESS (SE-5J)  
Joe Kaweck, CI (SE-5J)  
Jeff Kelley, Public Affairs (SI-7J)  
Richard Hackley, PAAS (MF-10J)  
Records Center (SMR-7J)  
Michael T. Chezick  
(Regional Environmental Officer, Office of Environmental Policy and Compliance, Philadelphia Region,  
Custom House, Room 244, 200 Chestnut Street, Philadelphia, PA 19106)

SE-5J

Karyn B. Marsh, Esq.  
Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5306

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CONCURRENCE REQUEST									
EMERGENCY RESPONSE BRANCH, SFD									
4-2-10 ES	3-11-10 OSC	RS CHIEF	WR EESS CHIEF	ORC CHIEF	ORC CHIEF	ERB CHIEF	ENF COORD	SFD DIRECTOR	RA

4-8-10

**REMOVAL PROGRAM**  
**COMBINATION NOTICE LETTER/104(e) ROUTE SLIP**  
(Revised April 2010)

\_\_\_\_\_  
Bautsch-Gray Mine Site  
(SITE NAME)

Please sign the yellow concurrence copy and check your name off this page.  
Then pass the document to the next name.

	<u>NAME</u>	<u>MAIL CODE</u>
1. ERB ENFORCEMENT SPECIALIST	Carol Ropski <i>CR 4/7/10</i>	SE-5J
2. ERB ON-SCENE COORDINATOR	Len Zintak <i>LZ 4/7/10</i>	SE-5J
3. EESS SECRETARY	Akimi Cheng	SE-5J
4. ORC STAFF ATTORNEY	Tom Turner <i>TT 4/7/10</i>	C-14J
5. EESS SECRETARY	Akimi Cheng	SE-5J
6. EESS SECTION CHIEF	Bill Messenger <i>[checkmark]</i>	SE-5J
7. ERB BRANCH SECRETARY	Cynthia Beck <i>CB</i>	SE-5J
8. ERB [#1 OR #2] BRANCH CHIEF	Linda Nachowicz <i>LG For LJ 4/8/10</i>	SE-5J
9.	RETURN TO SE-5J/EESS SECRETARY FOR MAILING TO PRPs AND DISTRIBUTION OF BCC LIST.	

DATE MAILED TO PRPs: APR 08 2010